

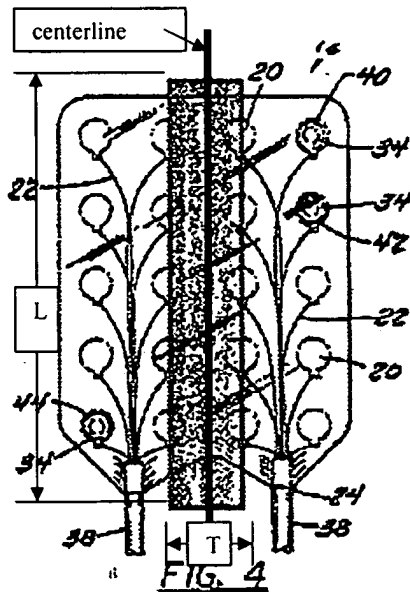
**Remarks**

This communication responds to the Final Office Action mailed November 12, 2008 for the application captioned above. By this amendment claims 25 and 27-29 are cancelled, without prejudice or disclaimer of the subject matter therein. The following remarks are respectfully submitted.

**§102 Rejection**

Claims 1, 3-4, 7, 11, 13, 15-16, 19, 23, 25 and 27-29 stand rejected under 35 U.S.C. 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Putz (US 4,903,702). Applicant has cancelled claims 25 and 27-29, without prejudice or disclaimer of the subject matter therein, rendering the rejections of these claims moot. Applicant respectfully traverses the rejections of claims 1, 3-4, 7, 11, 13, 15-16, 19 and 23, based upon the following arguments.

To support the rejection of the claims, under 102(e), the Examiner has arbitrarily selected a boundary, that defines a rectangle, which she considers to be a longitudinal centerline of the grid electrode 12 of Putz (shown in Figure 4). Applicant respectfully asserts, with reference to the most common definitions, that a line is defined, mathematically, to be a continuous extent of length without breadth or thickness, that a centerline is defined as a line that bisects a plane, and that a rectangle is defined as a four sided plane figure. A rectangle can define a centerline as that line which bisects the rectangle. Thus, with reference to the copy of Figure 4 of Putz, which the Examiner has presented, and Applicant has annotated, below, a longitudinal centerline of the rectangle would be precisely located along a length L of the rectangle, dividing a thickness T thereof into two equivalent portions.



Independent apparatus claims 1 and 13, of the present application, both limit the electrode array to be located on a longitudinal centerline defined by a paddle. With further reference to the above annotated copy of Figure 4 of Putz, it is readily apparent that, although radiopaque dielectric ring markers 34 are displaced from the noted centerline of the grid electrode 12, none of the contacts 12 (each of which may be likened to an electrode of the aforementioned electrode array of claims 1 and 13) are located on the centerline. All of the contacts 12 are, in fact, displaced from the centerline of the grid electrode 12. Furthermore an orientation marker of the medical lead, of the present application, is limited, by claim 1, to be displaced from the at least one electrode that comprises the electrode array, and, by claim 13, to be displaced from the electrode array. Applicant respectfully refers the Examiner to Figure 6 of the present application, which is copied below, as depicting an example of the electrode array (64), which comprises electrodes (66), and the marker (67), which is displaced from the array (64), as is defined by claims 1 and 13.

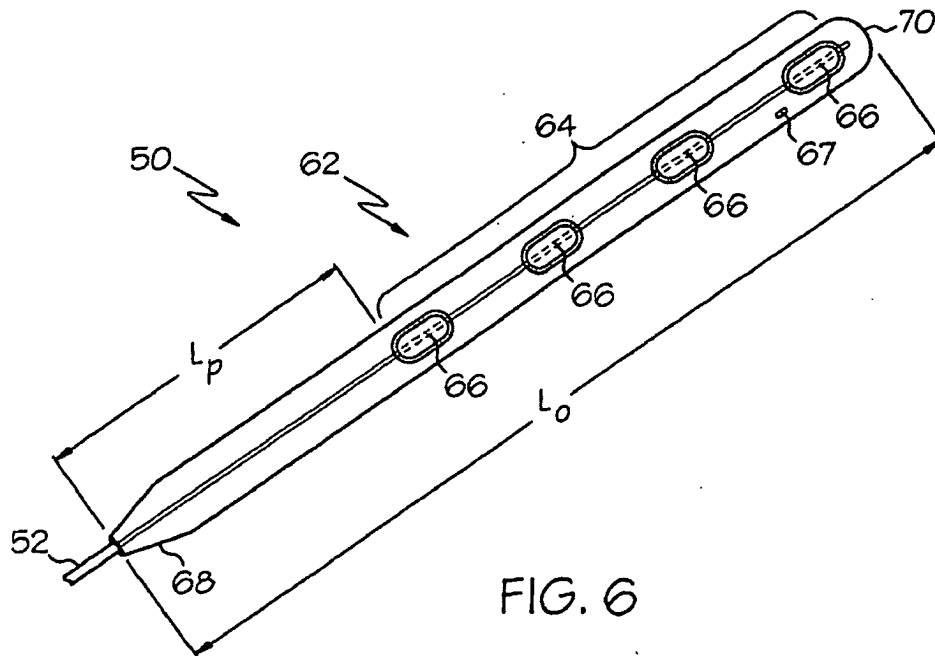


FIG. 6

Putz neither teaches nor suggests an orientation marker that is displaced from an electrode array. Rather, Putz teaches quite the opposite. With reference to column 6, lines 23-30, and to Figure 4, of Putz, each of the radiopaque dielectric ring markers 34 of Putz, which the Examiner has likened to the orientation marker in each of claims 1 and 13, is expressly described by Putz to correspond **in position** to each of a subset of contacts 20 forming the grid electrode 12. As in the previous response, to the office action dated April 3, 2008, Applicant respectfully directs the Examiner's attention to column 3, lines 11-19 and lines 52-59, to column 5, lines 40-45, and to column 6, lines 13-30 of Putz, where Putz describes the markers 34 for indicating the positions of contacts 20; the contacts 20 are described by Putz as lacking "significant x-ray opacity" (column 3, line 54) and as being "difficult to locate by x-ray" (column 5, lines 40-41), so that the dielectric marker rings 34 are needed to determine the position of each corresponding contact. With further reference to the exploded view in Figure 3, of Putz, an essential

construction of a strip electrode 10, which is said to be similar for grid electrodes 12 and 14 (column 6, lines 4 and 5), is shown. It is readily apparent, from Figure 3 and the associated description in column 5, lines 29-35, that the marker ring 34 is aligned with a contact 36 of the strip electrode 10 rather than being displaced therefrom.

The Examiner, in the alternative rejection, under 103(a), has asserted that it would be obvious to have modified Putz to include an orientation marker displaced from the centerline, and cites *In re Japikse*, for support of a rejection based on this assertion, and further asserts that such a relocation would provide the predictable results of enabling a clinician to monitor the paddle electrode during implantation. Applicant is somewhat confused by these assertions of the Examiner, since the displacement of the dielectric markers 34 from the centerline of grid electrode 12 is, in fact, disclosed by Putz, and no modification would be necessary. If the Examiner meant to assert that it would be obvious to modify Putz in order to displace the markers 34 from the contacts 20, of either strip electrode 10 or grid electrode 12 /14, then Applicant argues that such a modification would render the markers of Putz unsatisfactory for their intended purpose. The intended purpose of each marker 34, as taught by Putz, and outlined above, is to indicate the location/position of the corresponding contact, when the electrodes are viewed via x-ray. Thus, the disclosure of Putz is not sufficient to render the claims *prima facie* obvious, per the MPEP, section 2143.01, paragraph V, which states that “the proposed modification cannot render the prior art unsatisfactory for its intended purpose”. Furthermore, such a modification, would change the principle of operation in implanting the strip electrode 10 or grid electrode 11/14 of Putz, since, displacing any of markers 34 from the corresponding contact 20, would not allow the implanter to determine the position of the contact, as is taught by Putz. So, per paragraph VI, of the aforementioned section of the MPEP, again, the disclosure of Putz is insufficient to render the claims *prima facie* obvious.

Again, Applicant would like to point out that the electrode array of claim 1, comprises the at least one electrode from which the orientation marker is displaced, and that the displacement of the orientation marker from the electrode array, as is limited by both claims 1 and 13, should be construed, as was intended by the Applicant, to mean displacement from every

electrode of the paddle. This is clearly shown in Figure 6 of the present application. Furthermore, the present application does not disclose electrodes whose radiopacity may be insufficient for viewing, via X-ray, as does Putz. Thus, it may be appreciated that, if the orientation marker of the present application, were to be positioned adjacent to one of the electrodes of the present application, for example, in a fashion similar to that described by Putz, the radiopacity of the electrode would overlap that of the orientation marker so as to mask the X-ray visibility of the orientation marker, thereby defeating the purpose of the marker.

In light of the arguments presented above, applicant respectfully requests that the Examiner withdraw the rejection of claim 1, and 3-4, 7 and 11, dependent thereon, and of claim 13, and claims 15-16, 19 and 23, dependent thereon.

**§103 Rejection**

Claims 6, 8, 9 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Putz (US 4,903,702). Applicant respectfully traverses the rejection of claims 6, 8, 9 and 20-21, based on the argument presented above for independent claims 1 and 13, as respectfully requests that the Examiner withdraw the rejection of these claims.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested. Applicant believes no fee is due to enter the present Amendment. The Commissioner is hereby authorized to charge any additional filing fees required to Deposit Account No. 061910. The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

Dated: January 5, 2009

/Elisabeth Lacy Belden/  
Elisabeth Lacy Belden  
Reg. No. 50,751  
(612) 492-7843

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425 USA  
Facsimile: (612) 492-7077

4468527\_1.DOC